



October 16, 2001

Ms. Sandra C. Houston  
General Counsel  
Arlington Independent School District  
200 West Main Street  
Arlington, Texas 76010

OR2001-4686

Dear Ms. Houston:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 153415.

The Arlington Independent School District (the "district") received a request for copies of a variety of information. You state that you have released most of the responsive information to the requestor. You claim, however, that the submitted information is excepted from disclosure pursuant to section 552.114 of the Government Code and the Family Educational Rights and Privacy Act ("FERPA"). We have considered the exception you claim and have reviewed the submitted information.

In Open Records Decision No. 634 (1995), this office concluded that (1) an educational agency or institution may withhold from disclosure information that is protected by FERPA and excepted from disclosure by sections 552.026 and 552.101 without the necessity of requesting an attorney general decision as to those exceptions, and (2) an educational agency or institution that is state-funded may withhold from disclosure information that is excepted from disclosure by section 552.114 as a "student record," insofar as the "student record" is protected by FERPA, without the necessity of requesting an attorney general decision as to that exception. In this instance, however, you have submitted the documents at issue to this office for consideration. Therefore, we will consider whether any portions of these documents are excepted from disclosure pursuant to FERPA and section 552.114 of the Government Code.

FERPA provides that no federal funds will be made available under any applicable program to an educational agency or institution that releases personally identifiable information, other than directory information, contained in a student's education records to anyone but certain enumerated federal, state, and local officials and institutions, unless otherwise authorized by the student's parent. *See* 20 U.S.C. § 1232g(b)(1). "Education records" means those records that contain information directly related to a student and are maintained by an educational agency or institution or by a person acting for such agency or institution. *See id.* § 1232g(a)(4)(A). Information must be withheld from disclosure under FERPA only to the extent "reasonable and necessary to avoid personally identifying a particular student." *See* Open Records Decision Nos. 332 (1982), 206 (1978). Section 552.114 excepts from disclosure student records at an educational institution funded completely or in part by state revenue. This office generally applies the same analysis under section 552.114 and FERPA. *See* Open Records Decision No. 539 (1990). We agree that most of the information that you have redacted is student-identifying information in education or student records that must be withheld from disclosure pursuant to FERPA and section 552.114 of the Government Code. *See* Open Records Decision Nos. 539 (1990), 332 (1982), 206 (1978). However, because of the wording of this request, we have also marked additional information that must be withheld under FERPA and section 552.114.

However, we note that the submitted information contains some information that may be subject to section 552.117 of the Government Code. Section 552.117(1) excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. *See* Gov't Code § 552.117(1). However, information subject to section 552.117(1) may not be withheld from disclosure if the current or former employee made the request for confidentiality under section 552.024 after the request for information at issue was received by the governmental body. Whether a particular piece of information is public must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). We conclude that you must withhold the information that we have marked pursuant to section 552.117(1), if the subject employees requested that this information be kept confidential under section 552.024 prior to the district's receipt of this request for information. However, if the district employees did not request that this information be kept confidential pursuant to section 552.024 prior to the district's receipt of the request for information, we conclude that you must release such information to the requestor.

In summary, the district must withhold from disclosure the information that we have marked pursuant to FERPA. The district must also withhold the section 552.117 information that we have marked, if the subject employees requested that this information be kept confidential under section 552.024 prior to the district's receipt of this request for information. You must release all other submitted information to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

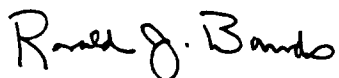
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for

contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink that reads "Ronald J. Bounds". The signature is written in a cursive style with a large, stylized "R" and "B".

Ronald J. Bounds  
Assistant Attorney General  
Open Records Division

RJB/seg

Ref: ID# 153415

Enc. Marked documents

cc: Mr. Tom Corbin  
Deputy Director  
United Educators Association  
4900 Southeast Loop 820, Suite 100  
Fort Worth, Texas 76140  
(w/o enclosures)